

Message Text

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E.O. 11652: GDS
TAGS: PGOV, WB, GW
SUBJECT: POSSIBILITY OF FRG PROSECUTION OF LORENZ
KIDNAPPERS

1. SUMMARY: WE HAVE RECEIVED SEVERAL INDICATIONS THAT DECISION BY FRG'S PROSECUTOR (GENERALBUNDESANWALT) DR. BUBACK TO TAKE OVER PROSECUTION IN BERLIN OF SUSPECTS IN LORENZ KIDNAPPING MAY BE IMMINENT AND ARE ENDEAVORING TO CONCERT WITH ALLIED MISSION ON HOW ALLIES MIGHT BEST CLARIFY SITUATION. IT IS TOO EARLY TO TAKE SUBSTANTIVE POSITION ON PROPRIETY OF FEDERAL PROSECUTION IN BERLIN, WHICH WOULD BE POLITICALLY SENSITIVE BUT HAS FAIRLY RECENT PRECEDENT, BUT WE WOULD THINK IT PRUDENT FOR GERMANS TO ALLOW ALLIES TIME TO CONSIDER ALL ASPECTS OF MATTER BEFORE DECISION IS TAKEN. END SUMMARY.

2. FRG PLENIPOTENTIARY SPANGENBERG ADVISED ALLIED MINISTERS AT LUNCH SHORTLY BEFORE CHRISTMAS THAT FRG PROSECUTOR BUBACK WAS GIVING SERIOUS CONSIDERATION
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TO TAKING OVER PROSECUTION OF SUSPECTS NOW UNDER

INVESTIGATIVE CONFINEMENT IN BERLIN JAIL. SPANGENBERG
SIAD HE BELIEVED BUBACK APPRECIATED SENSITIVITY OF MATTER
AND WOULD ASK FOREIGN OFFICE TO RAISE SUBJECT WITH ALLIES
IN BONN GROUP EARLY IN NEW YEAR AND BEFORE TAKING ANY
PUBLIC STEPS. TAGESSPIEGEL REPORTED DEC 25, HOWEVER,
THAT BUBACK HAD MADE BASIC DECISION TO TAKE OVER
PROSECUTION AND THAT BERLIN PROSECUTOR, WHO HAD HANDLED
CASES SINCE LAST MARCH, WAS PREPARING A REPORT WHICH WOULD
SHORTLY BE SENT TO BUBACK'S KARLSRUHE OFFICE. WHILE
TAGESSPIEGEL STORY IS NOT NECESSARILY CONTRADICTORY
TO SPANGENBERG'S INFORMATION, IT DOES SUGGEST THAT
BUBACK MAY BE THINKING MORE OF AFTER THE FACT CONSULTATION
THAN WE HAD INITIALLY BEEN LED TO BELIEVE. PREMATURE
PUBLICITY IN ANY EVENT SUGGESTS DESIRABILITY OF ALLIES
SEEKING TO CLARIFY MATTER BEFORE WE FIND OURSELVES
PRESENTED WITH FAIT ACCOMPLI.

3. WE HAVE AT THIS STAGE AN OPEN MIND AS TO WHETHER
OR NOT FEDERAL PROSECUTION MIGHT BE ACCEPTABLE. GROUNDS
FOR SUCH A PROSECUTION WOULD BE ARTICLE 105 OF LAW ON
COURTS (GERICHTSVERFASSUNGSGESETZ) PURSUANT TO WHICH
FEDERAL PROSECUTOR MAY TAKE OVER COMPETENCE FROM
LOCAL AUTHORITIES IN CRIME INVOLVING BLACKMAIL OF
FRG OR LAND GOVERNMENT ORGANS. AS EXPLAINED IN USBERLIN
432, THIS LAW HAS BEEN ADOPTED IN BERLIN AND IS SUBJECT
ONLY TO RESTRICTION THAT FEDERAL PROSECUTOR FALLS UNDER
ALLIED COMPETENCE WHILE OPERATING IN BERLIN AS RESULT
OF BK/O(51)63 AND THAT ALLIES MUST BE NOTIFIED, THOUGH
NOT NECESSARILY IN ADVANCE, OF HIS ASSUMPTION OF CASE.
THERE MAY WELL BE PRACTICAL REASONS JUSTIFYING SUCH A
MOVE IN THIS CASE, FOR EXAMPLE OTHER RELATED CASES AND
SUSPECTS IN FRG THAT WOULD MAKE IT JUDICIALLY ECONOMICAL
AND EFFICIENT TO COMBINE PROSECUTIONS AND GIVE THEM
CENTRAL DIRECTION. ALLIES WENT TO SOME LENGTH IN MARCH,
HOWEVER, TO MAKE CLEAR THAT CASE WAS THEN BEING HANDLED
BY BERLIN POLICE AND BERLIN PROSECUTOR, AND BUBACK'S
ASSUMPTION OF AUTHORITY NOW WOULD VERY LIKELY LEAD TO
RENEWED SOVIET INQUIRIES. ALLIES DID PERMIT FEDERAL
PROSECUTOR TO HANDLE HIGHLY PUBLIC HORST MAHLER PROSECUTION
IN 1972 BUT ONLY AFTER THOROUGH REVIEW IN BERLIN AND
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BONN GROUP, AND WE BELIEVE THAT SUCH A REVIEW, TAKING
INTO ACCOUNT ALL POLITICAL AND LEGAL FACTORS, WOULD
AGAIN BE PRUDENT.

4. FRENCH HAVE SUGGESTED THAT MISSIONS GO BACK TO
SPANGENBERG ON BASIS OF TAGESSPIEGEL REPORT. WE HAVE
SUGGESTED THAT MORE EFFICIENT MEANS MIGHT BE FOR
LEGAL ADVISERS TO DISCUSS SITUATION WITH SENATOR FOR

JUSTICE OXFORT, THEY WOULD ASK FOR HIS VIEWS AND,
WHILE RESERVING JUDGMENT, MAKE POINT THAT ALLIES WOULD
WISH TO HAVE OPPORTUNITY TO STUDY ALL ASPECTS BEFORE
ANY DECISION IS MADE. DEPENDING UPON INFORMATION
RECEIVED FROM OXFORT, EMBASSIES MIGHT THEN WISH TO
RAISE MATTER WITH FRG IN BONN GROUP. GEORGE

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